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from:	General Secretariat of the Council
to:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council on European Long-term Investment Funds – Outcome of the European Parliament's first reading (Strasbourg, 14 to 17 April 2014)

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**I. INTRODUCTION**

The Committee on Economic and Monetary Affairs presented a report consisting of one amendment to the proposed Regulation (amendment 1).

In addition, the EPP political group tabled one amendment (amendment 2).

## II. DEBATE

Commissioner MALMSTRÖM opened the debate, which took place on 16 April 2014, and:

- stated that at present fewer than ten Member States have legislation in place which allows long-term funds to operate in them. Where long-term funds are already available, there are sometimes more than fifty different versions to choose from. This fragmentation makes it very hard for investors to make informed choices;
- argued that the new European long-term investment funds, with a clear rule and recognisable brand, would facilitate the movement of savings into badly needed long-term projects;
- welcomed the progress already made in resolving many technical issues very rapidly;
- stated that the Commission is broadly happy with the text on which the plenary would be voting, because it reflected the aim of the Commission's proposal - to boost long-term investment;
- noted that the Committee on Economic and Monetary Affairs had agreed with the Commission on the importance of opening the funds to the widest possible range of investors, including retail investors;
- stated that UCITS funds had enjoyed overwhelming success over the previous 25 years because they are based on a single coherent set of rules which allow them to function as efficient European investment funds;
- agreed with the Committee that SMEs listed on stock markets still find it difficult to secure funding. The Commission is sympathetic to the idea of broadening the scope of assets to help SMEs. This objective should not be forgotten when defining which companies can be long-term investors. It would be wrong to end up helping multinational companies when the aim is to help SMEs;
- noted that the Committee had proposed a minimum percentage of companies and projects that must be domiciled in Europe for the fund. This is a reasonable objective, given that the aim is to boost investment in the European economy. That said, there is an overriding obligation to ensure that all EU laws comply with the Treaty and with international commitments. The Commission's Legal Service is therefore examining whether such a requirement is in fact possible; and

- stressed the need for the Parliament to move quickly to adopt the text. Delays in boosting investment in the European economy cannot but delay growth. Discussions are proceeding well within the Council and it is reasonable to predict that trilogues could begin in the autumn.

Speaking on behalf of the Committee on Budgets, Mr Ivailo KALFIN (S&D - BU):

- welcomed the proposal, which will boost the European economy at a difficult time; and
- argued that:
  - Member States should not be able to set extra conditions for funds;
  - the funds should not be trading in market derivatives;
  - the rules on investments in instruments should be clear; and
  - the funds should not be used for tax evasion.

Speaking on behalf of the EPP political group, Mrs Astrid LULLING (EPP - LU) noted that she had tabled an amendment for the EPP concerning the possibility for the funds to be compartments or sub-funds of other alternative investment funds (AIFs). The funds will not deliver the intended benefits without a minimum of flexibility and attractiveness. Her amendment is intended to ensure this. Allowing the funds to be compartments of other AIFs would introduce extra flexibility and reduce costs so as to render the funds sufficiently interesting for investors. The flexibility would include the possibility for an investor in an AIF to transfer without entry fees or to transfer from one compartment to another of the same AIF. This would allow the management company to build up a relationship of trust with investors. It would allow investors to avoid fees. In addition, allowing AIFs to have more than one compartment would avoid the costs linked to establishing brand new funds. Compartments were provided for in other key directives. The amendment would have no impact on supervision or on investor protection. She said her amendment enjoyed the support of the Greek minister of finance.

Speaking on behalf of the S&D political group, Mr Saïd EL KHADRAOUI (S&D - BE):

- welcomed the proposal and its potential benefits for the EU's economy, particularly at a time when it is difficult to get a bank loan and when funding for infrastructure has plummeted in recent years. Funding problems are particularly acute for Greek, Spanish and Italian SMEs;

- warned that investors should be allowed to withdraw their money at short notice only in strictly limited circumstances;
- stressed the need to define infrastructure projects with care; and
- emphasised the need to avoid the funds being used to avoid tax.

Speaking on behalf of the ALDE political group, Mr Philippe DE BACKER (ALDE - BE):

- stressed the importance of promoting investment in SMEs; and
- called for flexibility for fund managers.

Commissioner MALMSTRÖM once more took the floor and called for an agreement at the start of the autumn.

### **III. VOTE**

When it voted on 17 April 2014, the Parliament adopted both the tabled amendments (amendments 1 and 2). The text of the Commission's proposal, as amended by these amendments, is annexed to the present note.

The vote on the legislative resolution was then postponed to a later session, thereby not closing the first reading. The matter was instead referred back to the Committee on Economic and Monetary Affairs, pursuant to Rule 57(2) of the European Parliament's Rules of Procedure.

## **European long-term investment funds \*\*\*I**

**Amendments adopted by the European Parliament on 17 April 2014 on the proposal for a regulation of the European Parliament and of the Council on European Long-term Investment Funds (COM(2013)0462 – C7-0209/2013 – 2013/0214(COD))<sup>1</sup>**

**(Ordinary legislative procedure: first reading)**

**[Amendment No 1 unless otherwise stated]**

### AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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### REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European Long-term Investment Funds

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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<sup>1</sup> The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0211/2014).

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Long-term finance is a crucial enabling tool for putting the European economy on a path of sustainable, smart and inclusive growth, ***in accordance with the Europe 2020 strategy, high employment and competitiveness*** for building tomorrow's economy in a way that is less prone to systemic risks and is more resilient. European long-term investment funds (ELTIFs) provide finance to various infrastructure projects, unlisted companies ***or listed small and medium-sized enterprises (SMEs)*** of lasting duration that issue equity or debt instruments for which there is no readily identifiable buyer. By providing finance to such projects, ELTIFs contribute to the financing of the ***Union's real economy and the implementation of its policies***.

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■ .

<sup>1</sup> OJ C 67, 6.3.2014, p. 71.

- (2) On the demand side, ELTIFs can provide a steady ***and safe*** income stream for pension administrators, insurance companies, ***foundations, municipalities*** and other entities that face regular and recurrent liabilities ***and are seeking long-term returns within well-regulated structures***. While providing less liquidity than investments in transferable securities, ELTIFs can provide a steady ***and safe*** income stream for individual investors that rely on the regular cash flow that an ELTIF can produce. ELTIFs can also offer good opportunities for capital appreciation over time for those investors not receiving a steady income ***and safe*** stream. ***It should be possible to authorise an ELTIF to reduce its capital on a pro rata basis in the event that it has divested itself of one of its assets.***
- (3) Financing for projects, regarding transport infrastructure, sustainable energy generation or distribution, social infrastructure (housing or hospitals), ***the*** roll-out of new technologies and systems that reduce use of resources and energy or the further growth of SMEs, can be scarce. As the financial crisis has shown, complementing bank financing with a wider variety of financing sources that better mobilise capital markets could help tackle financing gaps. ELTIFs can play a crucial role in this respect. ***For certain projects they could make use of resources such as innovative financial instruments to supplement public funding eroded by the sovereign debt crisis.***
- (4) ***Given that*** investors may be interested in investing in an ELTIF, the ***fact that investors should be given the right incentives to invest in them and the fact that in particular retail investors may not have the necessary resources or a sufficiently diversified portfolio that would allow them to lock-up their capital for a long period of time, an ELTIF should be able to offer redemption rights*** to its investors. ***Therefore, the ELTIF manager should be given discretion to decide whether to establish ELTIFs with or without redemption rights according to the ELTIF's investment strategy. When a redemption rights regime is in place, those rights and their main features should be clearly predefined and disclosed in the rules or instruments of incorporation of the ELTIF. In addition, the Commission's impact assessment found at national level cases of long-term funds that have been structured as listed entities. That allows investors to trade their shares or units in the fund on a secondary market. When the shares of the fund are listed on an exchange, investors are able to buy and sell shares of the fund directly on the exchange like any other listed security. The secondary market can also be operating when the shares or units of the fund are not listed. In that case the investors can exchange directly their holding with another***

*investor. Intermediaries like banks or distributors can play a facilitating role in this secondary market. They can collect the buy and sell orders and can match those orders between their clients. If long-term investing is really supposed to become attractive for smaller-scale investors or the retail community at large, secondary markets will be the principal venue in which you can buy into or leave the long-term fund.* A report, three years after the adoption of this Regulation, **will** investigate whether this rule will have achieved the expected results in terms of ELTIF distribution.■

- (4a) *In order to make ELTIFs a feasible and attractive choice for professional investors such as institutions for occupational retirement provision, pension funds, and insurance companies, it is important that necessary adjustments are made to their regulatory own funds requirements, within the framework of Directive 2003/41/EC of the European Parliament and of the Council<sup>1</sup> and of Directive 2009/138/EC of the European Parliament and of the Council<sup>2</sup> in order to provide flexibility in the case of ELTIFs as regards the high capital requirements for investments in illiquid assets. Moreover, any additional national regulatory constraints should be thoroughly assessed, if necessary.*
- (5) Long-term asset classes within the meaning of this Regulation should comprise *equity or debt instruments issued by non-listed undertakings and listed SMEs* where there is no readily identifiable buyer *for those*. ***They should also comprise equity or debt instruments issued by listed undertakings of maximum capitalisation of EUR 1 billion.*** This Regulation should also ***cover*** real assets that require significant up-front capital expenditure ***and that produce recurrent and foreseeable cash flow through their duration.***
- (6) In the absence of a Regulation setting out rules on ELTIFs, diverging measures might be adopted at national level, which are likely to cause distortions of competition resulting from differences in investment protection measures. Diverging requirements on portfolio composition, diversification and eligible assets, in particular the investment in commodities, create obstacles to the cross-border marketing of funds that focus on non-listed undertakings

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<sup>1</sup> ***Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).***

<sup>2</sup> ***Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (OJ L 335, 17 December 2009, p. 1).***



and real assets because investors cannot easily compare the different investment propositions offered to them. Divergent national requirements also lead to different levels of investor protection. Furthermore, different national requirements pertaining to investment techniques, such as the permitted levels of borrowing, use of derivative financial instruments, rules applicable to short selling or securities financing transactions lead to discrepancies in the level of investor protection. In addition, different requirements on redemption and/or holding periods impede the cross-border selling of funds investing in non-listed assets. ***By increasing legal uncertainty, those*** divergences can undermine the confidence of investors when considering investments in such funds, and reduce the scope for investors to choose effectively between various long-term investment opportunities. ***Member States should therefore not be allowed to lay down additional requirements in the area covered by this Regulation and*** the appropriate legal basis for this Regulation ***should be*** Article 114 of the Treaty, as interpreted by consistent case law of the Court of Justice of the European Union.

- (7) Uniform rules across the Union are necessary to ensure that ELTIFs display a coherent ***and stable*** product profile across the Union. In order to ensure the smooth functioning of the internal market and a high level of investor protection, it is necessary to establish uniform rules regarding the operation of ELTIFs, in particular on the composition of the portfolio of ELTIFs and the investment instruments that they are allowed to use in order to gain exposure to ***long-term assets such as equity or debt instruments issued by listed SMEs, and by*** non-listed undertakings, as well as real assets. Uniform rules on the portfolio of an ELTIF are also required to ensure that ELTIFs that aim to generate regular income maintain a diversified portfolio of investment assets suitable to maintain the regular cash flow. ***Moreover, coordination among tax frameworks of Member States is necessary to ensure a level playing field in terms of investor attractiveness and convergence of national policies is required to establish similar conditions in terms of investment climate in order to address imbalances among Member States.***
- (8) It is essential to ensure that the definition of the operation of ELTIFs, in particular on the composition of the portfolio of ELTIFs and the investment instruments that they are allowed to use be directly applicable to the managers of ELTIFs and therefore these new rules need to be adopted as a Regulation. This also ensures uniform conditions for the use of the designation ELTIF by preventing diverging national requirements. Managers of ELTIFs should follow the same rules across the Union, in order to also enhance the confidence of

investors in ELTIFs and ensure sustainable trustworthiness of the designation. At the same time, by adopting uniform rules, the complexity of the regulatory requirements applicable to ELTIFs is reduced. By means of uniform rules, the managers' cost of compliance with divergent national rules governing funds that invest in *listed SMEs and non-listed long-term assets* and comparable real asset classes is also reduced. This is especially true for managers that wish to raise capital on a cross-border basis. It also contributes to eliminate competitive distortions.

- (9) The new rules on ELTIFs are closely linked to Directive 2011/61/EU of the European Parliament and of the Council<sup>1</sup> since that Directive forms the legal framework governing the management and marketing of alternative investment funds (AIFs) in the Union. By definition ELTIFs are EU AIFs that are managed by alternative investment fund managers (AIFMs) authorised in accordance with Directive 2011/61/EU.
  
- (10) Whereas Directive 2011/61/EU also *provides for* a staged third country regime governing non-EU AIFMs and non-EU AIFs, the new rules on ELTIFs have a more limited scope emphasising the European dimension of the new long term investment product. Hence, only an EU AIF as defined in Directive 2011/61/EU *should be* eligible to become an authorised ELTIF and only if it is managed by an EU AIFM that has been authorised in accordance with Directive 2011/61/EU. ***However, third-country investors should also be encouraged to invest in ELTIFs given the valuable capital that they can contribute towards projects in the Union.***
  
- (11) The new rules applicable to ELTIFs should build on the existing regulatory framework established through Directive 2011/61/EU and the acts adopted for its implementation. Therefore, the product rules concerning ELTIFs should apply in addition to the rules laid down in the existing Union legislation. Particularly, the management and marketing rules laid down in Directive 2011/61/EU should apply to ELTIFs. Equally, the rules on the cross-border provision of services and freedom of establishment laid down in Directive 2011/61/EU should apply accordingly to the cross-border activities of ELTIFs. These should

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<sup>1</sup> *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).*

be supplemented by the specific marketing rules designed for the cross-border marketing of ELTIFs to both retail and professional investors across the Union.

- (12) Uniform rules should apply to all those EU AIFs that wish to market themselves as ELTIFs. EU AIFs that do not wish to market themselves as ELTIFs should not be bound by these rules, thereby also consenting not to benefit from the advantages that ensue. On the other hand, undertakings for collective investment in transferable securities (UCITS) and non-EU AIFs would not be eligible for marketing as ELTIFs.
- (13) In order to ensure the compliance of ELTIFs with the harmonised rules governing the activity of these funds, it is necessary to require that competent authorities authorise ELTIFs. The harmonised authorisation and supervision procedures for AIFMs under Directive 2011/61/EU should therefore be supplemented with a special authorisation procedure for ELTIFs. Procedures should be established to ensure that only EU AIFMs authorised in accordance with Directive 2011/61/EU and capable of managing an ELTIF may manage ELTIFs. All appropriate steps are taken to ensure that the ELTIF shall be able to comply with the harmonised rules governing the activity of these funds.
- (14) Given that EU AIFs may take different legal forms that do not necessarily endow them with legal personality, the provisions requiring ELTIFs to take action should be understood to refer to the manager of the ELTIF in cases where the ELTIF is constituted as an EU AIF that is not in a position to act by itself because it has no legal personality of its own.
- (15) In order to ensure that ELTIFs target long-term investments ***and contribute to finance a sustainable growth of the EU's economy***, rules on the portfolio of ELTIFs should require a clear identification of the categories of assets that should be eligible for investment by ELTIFs and of the conditions under which they should be eligible. An ELTIF should invest at least 70 % of its capital in eligible investment assets ***and at least 60 % of its capital in securities issued by an eligible portfolio undertaking established in the Union***. To ensure the integrity of ELTIFs it is also desirable to prohibit an ELTIF from engaging in certain financial transactions that might endanger its investment strategy and objectives by raising additional risks different to those that might be expected for a fund targeting long-term investments. In order to ensure a clear focus on long term investments, as may be useful for retail investors unfamiliar with less conventional investment strategies, an ELTIF should not be allowed to invest in financial derivative instruments other than for the purpose of hedging the ***risks inherent to its own investments***. Given the liquid nature of commodities and

financial derivative instruments that give an indirect exposure to them, investments in commodities do not require a long-term investor commitment and therefore should be excluded. This rationale does not apply to investments in infrastructure or companies related to commodities or whose performance is linked indirectly to the performance of commodities, such as farms in the case of agricultural commodities or power plants in the case of energy commodities.

- (15a) *In order for ELTIF to contribute effectively to a sustainable, smart and inclusive growth in the Union, each ELTIF should take into account the social impact of eligible investments, taking into account its environmental, social and governance characteristics. In particular, the ELTIF manager should consider the inherent contribution of the selected asset to the objectives of the European model of growth, namely enhancing social infrastructures, sustainable mobility, renewable energy production and distribution, energy efficiency processes, as well as firms operating in sectors fostering environmental and social solutions, or having a high potential of innovation.***
- (16) The definition of what constitutes a long-term investment is broad. Without necessarily requiring long-term holding periods for the ELTIF manager, eligible investment assets are generally illiquid, require commitments for a certain period of time, and have an economic profile of a long-term nature. Eligible investment assets are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability. ***However, as listed SMEs may face problems of liquidity and access to the secondary market, equity or debt instruments issued by listed SMEs should be included in the eligible investment assets of the ELTIF as they need to maintain a stable shareholding structure. Consequently, eligible investment assets may be transferable securities and therefore may have access to the liquidity of secondary markets.*** The economic cycle of the investment sought by ELTIFs is essentially of a long-term nature due to the high capital commitments and the length of time required to produce returns. As a result such assets do not suit investments with redemption rights, ***apart from specific cases and under certain conditions.***
- (17) An ELTIF should be allowed to invest in assets other than eligible investment assets, as may be necessary to efficiently manage its cash flow, but only so long as this is consistent with the ELTIF's long term investment strategy.

- (18) Eligible investment assets must be understood to include participations, such as equity or quasi-equity instruments, debt instruments in qualifying portfolio undertakings and loans provided to them. They should also include participation in other funds that are focused on assets such as investments in non-listed undertakings that issue equity or debt instruments for which there is not always a readily identifiable buyer. Direct holdings of real assets, unless they are securitised, should also form a class of eligible assets ***under strict conditions regarding their acquisition value and cash-flow profile.***
- (19) Quasi-equity instruments must be understood to comprise a type of financing instrument, which is a combination of equity and debt, where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking, and where the repayment of the instrument in the event of default is not fully secured. Such instruments include a variety of financing instruments such as subordinated loans, silent participations, participating loans, profit participating rights, convertible bonds and bonds with warrants.
- (20) To reflect existing business practices, an ELTIF should be allowed to buy existing shares of a qualifying portfolio undertaking from existing shareholders of that undertaking. Also, for the purposes of ensuring the widest possible opportunities for fundraising, investments into other ELTIFs should be permitted. To prevent dilution of the investments into qualifying portfolio undertakings, ELTIFs should only be permitted to invest in other ELTIFs, provided that those ELTIFs have not themselves invested more than 10 % of their capital in other ELTIFs.
- (21) The use of financial undertakings ***is*** necessary in order to ***effectively market ELTIFs to investors as well as*** pool and organise the contributions of different investors, including investments of a public nature, into infrastructure projects. ELTIFs should therefore be permitted to invest in eligible investment assets by means of financial undertakings, so long as these undertakings are dedicated to financing long-term projects ***and the growth of SMEs.***
- (22) ■ Qualifying portfolio undertakings ***should*** include infrastructure projects, investment in unlisted companies ***and listed SMEs*** seeking growth ■ that could be suitable for long term investment purposes.
- (23) Due to the scale of infrastructure projects, these require large amounts of capital that have to remain invested for long periods of time. Such infrastructure projects ***should*** include public

building infrastructure such as schools, hospitals or prisons, social infrastructure such as social housing, transport infrastructure such as roads, mass transit systems or airports, energy infrastructure such as energy grids, climate adaptation and mitigation projects, power plants or pipelines, water management infrastructure such as water supply systems, sewage or irrigation systems, communication infrastructure such as networks and waste management infrastructure such as recycling or collection systems.

- (24) Unlisted undertakings can face difficulties accessing capital markets and financing further growth and expansion. Private financing through equity stakes or loans are typical ways of raising financing. Because such instruments are by their nature long-term investments they require patient capital that ELTIFs can provide. ***Moreover, listed SMEs, often face significant obstacles in acquiring long-term financing and ELTIFs may provide valuable alternative sources of funding.***
- (25) Investments in ***infrastructure*** require patient capital due to the absence of liquid secondary markets. Investment funds represent an essential source of financing for assets that require large capital expenditure. For these assets, capital pooling is often necessary to achieve the desired level of funding. Such investments require long periods of time due to the generally long economic cycle attached to these assets. It generally takes several years to *amortise* the investment in large real assets. In order to facilitate the development of such large assets, ELTIFs should be able to invest directly in ***infrastructure*** with a value of more than *EUR 10 million and which deliver foreseeable and recurrent cash-flows throughout their term.*
- For these reasons it is necessary to treat direct holdings in ***infrastructure*** in qualifying portfolio undertakings in like manner.
- (26) Where the manager holds a stake in a portfolio undertaking, there is a risk that the manager puts its interests ahead of the interests of investors in the fund. To avoid such conflict of interests, the ELTIF should only invest in assets that are unrelated to the manager ***to ensure sound corporate governance, unless they invest in units or shares or assets managed by the ELTIF manager that are eligible under this Regulation.***
- (27) In order to allow managers of ELTIFs a certain degree of flexibility in the investment of their funds, trading in assets other than long-term investments should be permitted up to a maximum threshold of 30 % of their capital.

- (28) In order to limit risk-taking by ELTIFs it is essential to reduce counterparty risk by subjecting the portfolio of ELTIFs to clear diversification requirements. All over-the counter (OTC) derivatives should be subject to Regulation (EU) No 648/2012 of the European Parliament and of the Council [...] <sup>1</sup>.
- (29) In order to prevent the exercise of significant influence by an investing ELTIF over the management of another ELTIF or of an issuing body, it is necessary to avoid excessive concentration by an ELTIF in the same investment.
- (30) In order to allow ELTIF managers to raise further capital during the life of the fund, they should be permitted to borrow cash amounting to up to **40** % of the capital of the fund. This should serve to provide additional return to the investors. In order to eliminate the risk of currency mismatches, the ELTIF should only borrow in the currency the manager expects to acquire the asset in.
- (31) Due to the long-term and illiquid nature of the investments of an ELTIF, the managers should have sufficient time to apply the investment limits. The time required to implement these limits should take account of the peculiarities and characteristics of the investments but should not exceed five years.
- (31a) Under exceptional circumstances specified within the rules of incorporation, the lifecycle of ELTIF could be extended or reduced to allow for more flexibility, where, for instance, a project is completed later or earlier than expected, to put it in line with its long term investment strategy.***
- (31b) The European Investment Bank (EIB), given its expertise in Union infrastructure financing, as well as other similar national institutions should actively cooperate with the ELTIF managers and the investors, particularly retail investors who may lack the relevant experience. Furthermore, the EIB's Project Bonds Initiative and other similar activities, such as the Connecting Europe Facility, should be directly linked to the ELTIF, with the EIB assuming risk and providing guarantees, to reduce risks inherent to this type of investments and encourage investors to trust the ELTIF as a safe investment vehicle.***

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<sup>1</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201. 27.7.2012. p. 1).

- (32) **■** Nothing should prevent an ELTIF from seeking admission of these shares or units to a regulated market as defined in *Article 4(21) of Directive 2014/.../EU of the European Parliament and of the Council<sup>1</sup> [new MIFID]*, to a multilateral trading facility as defined in *Article 4(22) of Directive 2014/.../EU [new MIFID]*, or to an organised trading facility as defined in *Article 4(23) of Directive 2014/.../EU [new MIFID]*, thus providing investors with an opportunity to sell their units or shares before the end of life of the ELTIF. The rules or instruments of incorporation of an ELTIF should therefore not prevent units or shares from being admitted to or from being dealt in regulated markets, nor should they prevent investors from freely transferring their shares or units to third parties who wish to purchase those shares or units. *However, according to experiences in national markets to date, trading in secondary markets may work in some markets but in others this option may entail high premiums or important discounts on the units or shares of ELTIFs that are admitted to or dealt on regulated markets, which would prevent, in practice, investors from using this alternative. Therefore, that option may not be sufficient to substitute for the option of more regular redemptions.*
- (33) In order for investors to effectively redeem their units or shares at the end of the fund's life, the manager should start to sell the portfolio of assets of the ELTIF in good time to ensure the value is properly realised. In determining an orderly disinvestment schedule, the ELTIF manager should take into account the different maturity profiles of the investments and the length of time necessary to find a buyer for the assets in which the ELTIF is invested. Due to the impracticality of maintaining the investment limits during this liquidation period, they should cease to apply when the liquidation period starts.
- (34) The assets in which an ELTIF is invested may obtain a listing on a regulated market during the life of the fund. Where this happens, the asset would no longer comply with the non-listing requirement of this Regulation. In order to allow managers to disinvest from such an asset in an orderly manner, this asset could continue to count towards the 70 % limit of eligible investment assets for up to three years.
- (35) Given the specific characteristics of ELTIFs, as well as the targeted retail and professional investors it is important that solid transparency requirements be put in place that are capable

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<sup>1</sup> *Directive 2014/.../EU of the European Parliament and of the Council of ... on markets in financial instruments and amending Directive 2011/61/EU and Directive 2002/92/EC [new MIFID].(OJ L ...).*



of allowing prospective investors to make an informed judgement and be fully aware of the risks implied. In addition to the transparency requirements contained in Directive 2011/61/EU, ELTIFs should publish a prospectus the content of which should necessarily include all information required to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council<sup>1</sup> and Commission Regulation (EC) No 809/2004.<sup>2</sup> For the marketing of an ELTIF to retail investors it should be mandatory to publish a key information document (KID) in accordance with Regulation (EU) No .../... of the European Parliament and the Council<sup>3</sup> [PRIIPS]. Furthermore, any marketing documents should explicitly draw attention to the risk profile of the ELTIF ***and mention any participation in instruments involving Union budgetary funds.***

- (36) As ELTIFs target both professional and retail investors across the Union, it is necessary that certain requirements be added to the marketing requirements laid down in Directive 2011/61/EU in order to ensure an appropriate degree of investor protection, ***particularly for retail investors.*** Thus, facilities should be made available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units or shares and making available the information which the ELTIF and its managers are required to provide. Moreover, in order to ensure that retail investors are not disadvantaged with respect to experienced professional investors certain safeguards have to be put in place when ELTIFs are marketed to retail investors.
- (37) The competent authority of the ELTIF should verify whether an ELTIF is able to comply with this Regulation on an on-going basis. As the competent authorities are already provided

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<sup>1</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p.64).

<sup>2</sup> Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p.1).

<sup>3</sup> Regulation (EU) No .../... of the European Parliament and the Council on ... [PRIIPS] (OJ ...).

with extensive powers under Directive 2011/61/EU, it is necessary that such powers be extended in order to be exercised by reference to the new common rules on ELTIFs.

- (38) ESMA should be able to exercise all the powers conferred under Directive 2011/61/EU with respect to this Regulation ***and should be provided with all resources necessary for this purpose, in particular human resources.***
- (39) The *European Supervisory Authority* (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council [...]<sup>1</sup>, should play a central role in the application of the rules concerning ELTIFs by ensuring consistent application of Union rules by national competent authorities. As a body with highly specialised expertise regarding securities and securities markets, it is efficient and appropriate to entrust ESMA with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission, in respect of the circumstances in which the life of an ELTIF will be sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, the features of the schedule for the orderly disposal of ELTIF assets, the definitions, calculation methodologies and presentation of cost disclosures, and the characteristics of the facilities to be set up by ELTIFs in each Member State where they intend to market units or shares.
- (39a) ***The provision of tax incentives, at national level, relating to long-term investments via ELTIFs can play an important role in directing the currently available resources to the financing of long-term projects in the Union, particularly focusing on projects which are beneficial to society and to the environment. For that reason, it could be assessed whether project bonds should also be considered to be eligible assets, with the aim of ensuring economies of scale and encouraging synergies between Union investment tools. Member States that are facing the consequences of fiscal adjustment are encouraged to provide state guarantees and favourable tax treatments such as tax deductions for investors who participate in ELTIFs. Member States should take all necessary legislative and institutional measures to ensure implementation of this Regulation.***

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<sup>1</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (ESMA), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p.84).

- (39b) Member States, as well as regional and local authorities have a significant responsibility in effectively promoting and marketing ELTIFs to investors, as well as providing specific information to citizens and consumers about the benefits offered by that new framework.*
- (39c) It is crucial to encourage a number of semi-professional investors in the Union, such as mid-tier pension schemes, insurance companies, municipalities, churches, charities and foundations, that may have sufficient capital and certain expertise, to invest in ELTIFs.*
- (40) The new uniform rules on ELTIFs should comply with the provisions of Directive 95/46/EC of the European Parliament and of the Council [...] <sup>1</sup> and with Regulation (EC) No 45/2001 of the European Parliament and of the Council [...] <sup>2</sup>.
- (40a) An ELTIF should not invest in an eligible investment asset in which the ELTIF manager has or takes a direct or indirect interest other than by holding units or shares of the ELTIF it manages. Guarantees should also be in place in order to avoid practices that distort competition or create barriers to entry.*
- (41) Since the objectives of this Regulation, namely to ensure uniform requirements on the investments and operating conditions for ELTIFs throughout the Union, while taking full account of the need to balance safety and reliability of ELTIFs with the efficient operation of the market for long-term financing and the cost for its various stakeholders, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

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<sup>1</sup> *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).*

<sup>2</sup> *Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and of the free movement of such data (OJ L 8, 12.1.2001, p. 1).*

- (42) The new uniform rules on ELTIFs respect the fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably *access to services of general economic interest*, consumer protection, the freedom to conduct a business, the right to remedy and to a fair trial, and the protection of personal data. The new uniform rules on ELTIFs should be applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

## Chapter I

### General provisions

#### Article 1

##### Subject matter *and objective*

1. This Regulation lays down uniform rules on the authorisation, investment policies and operating conditions of EU alternative investment funds (AIFs), *or compartments of AIFs*, that are marketed in the Union as European long-term investment funds (ELTIFs). [Am. 2]
- 1a. The objective of this Regulation is to raise and channel capital towards the real economy, in line with the objectives of a smart, sustainable and inclusive growth.*
2. Member States shall not add any additional requirements in the field covered by this Regulation.

#### Article 2

##### Definitions

For the purposes of this Regulation the following definitions apply:

- (1) ‘capital’ means aggregate capital contributions and uncalled committed capital, calculated on the basis of amounts investible after deduction of all fees, charges and expenses which are directly or indirectly borne by investors;
- (1a) 'retail investor' means an investor who is not a professional client, in accordance with Section I of Annex II to Directive... /.../EU [new Mifid];*

- (1b) *'professional investor' means an investor who is a professional client, in accordance with Section I of Annex II to Directive ..././EU [new Mifid], or who may, on request, be treated as a professional client in accordance with that Directive;*
- (1c) *'semi-professional investor' means any retail investor who commits to investing a minimum of EUR 100 000 and who provides a written statement, separate from the contract to be concluded for the commitment to invest, to the effect that the investor is aware of the risks associated with the envisaged commitment or investment;*
- (2) 'equity' means ownership interest in an undertaking, represented by the shares or other forms of participation in the capital of the qualifying portfolio undertaking issued to its investors;
- (3) 'quasi-equity' means any type of financing instrument where the return on the instrument is linked to the profit or loss of the qualifying portfolio undertaking and where the repayment of the instrument in the event of default is not fully secured;
- (4) 'financial undertaking' means any of the following:
- (a) a credit institution as defined in point (1) of *Article 4(1) of Regulation (EU) No 575/2013* of the European Parliament and of the Council<sup>1</sup>;
  - (b) an investment firm as defined in point (2) of *Article 4(1) of Regulation (EU) No 575/2013*;
  - (c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council<sup>2</sup>;
  - (d) a financial holding company as defined in point (20) of *Article 4(1) of Regulation (EU) No 575/2013*;

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<sup>1</sup> *Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 177, 30.6.2006, p.1).*

<sup>2</sup> *Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p.1).*

(e) a mixed-activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013;

(4a) *'professional ELTIF' means an ELTIF eligible to be marketed only to professional and semi-professional investors;*

(4b) *'EU AIF' means EU AIF as defined in Article 4(1)(k) of Directive 2011/61/EU;*

(4c) *'EU AIFM' means EU AIFM as defined in Article 4(1)(l) of Directive 2011/61/EU;*

(5) 'competent authority of the ELTIF' means the competent authority of the home Member State of the EU AIF as defined in Article 4(1)(p) of Directive 2011/61/EU;

(6) 'ELTIF home Member State' means the Member State where the ELTIF is authorised;

*'competent authority of the ELTIF manager' means the competent authority of the home Member State of the EU AIFM as defined in Article 4(1)(q) of Directive 2011/61/EU;*

(6a) *'repurchase agreement' means any agreement in which one party transfers securities or any rights related to that title to a counterparty, subject to a commitment to repurchase them at a specified price on a future date specified or to be specified;*

(6b) *'short selling' means the uncovered sale of assets;*

(6c) *'retail ELTIF' means an ELTIF whose investors include retail investors;*

(6d) *'securities lending' and 'securities borrowing' mean a transaction in which an institution or its counterparty transfers securities subject to a commitment that the borrower will return equivalent securities at some future date or when requested to do so by the transferor, that transaction constituting securities lending to the transferor and securities borrowing to the transferee;*

(6e) *'infrastructure' means basic physical and intangible organisational structures and facilities needed for the operation of a society or enterprise.*

## Article 3

### Authorisation and use of designation

1. Only EU AIFs shall be eligible *to apply for and to be granted* authorisation as an ELTIF.

2. An ELTIF *may* be marketed in the *whole* Union *or in any Member State provided that* it has been authorised in accordance with this Regulation.

The authorisation as an ELTIF shall be valid for all Member States.

3. A collective investment undertaking shall only use the designation 'ELTIF' or '*European* long-term investment fund' in relation to itself or the units or shares it issues where it has been authorised in accordance with this Regulation.
4. The competent authorities of the ELTIF shall, on a quarterly basis, inform ESMA *on a confidential basis*, of authorisations granted or withdrawn pursuant to this Regulation *and provide all necessary details on the ELTIF activities that ensure compliance with the provisions laid down in this Regulation*.

ESMA shall keep a central public register identifying each ELTIF authorised under this Regulation, its manager, *the information provided under Article 4* and the competent authority of the ELTIF. The register shall be made available in electronic format.

#### Article 4

##### Application for authorisation as ELTIF

1. An *EU AIF* shall apply for authorisation *as ELTIF* to its competent authority.

The application for authorisation as an ELTIF shall include the following:

- (a) the fund rules or instruments of incorporation;
- (b) information on the identity of the *proposed ELTIF* manager, *its current and previous fund management history and experience relevant to long term investment*;
- (c) information on the identity of the depositary;
- (d) a description of the information to be made available to investors;
- (da) for retail ELTIFs, a description of the procedures and arrangements in place to deal with retail investors' complaints;*
- (e) any other information or document requested by the competent authority of the ELTIF to verify compliance with the requirements of this Regulation.

2. An EU **■** AIFM authorised under Directive 2011/61/EU **is entitled to** manage an ELTIF, **and shall make a simplified application to the competent authority of the ELTIF for approval to manage an ELTIF** that has submitted an application for authorisation in accordance with paragraph 1. **Such an application for approval shall refer to the application (including documentation submitted) and authorisation under Directive 2011/61/EU.**

**■**

3. The ELTIF and the EU AIFM shall be informed within **/two months/** from the date of submission of a complete application whether authorisation of the ELTIF **and the approval to manage the ELTIF** has been granted.
4. Any subsequent modifications of the documentation referred to in **paragraph 1 ■** shall be immediately notified to the competent authority of the ELTIF.

## Article 5

### Conditions for granting the authorisation

1. An applicant ELTIF shall be authorised only where its competent authority:
- (a) is satisfied that the applicant ELTIF is able to meet all the requirements of this Regulation **and has approved the fund rules or instruments of incorporation and the choice of the depositary;**
  - (b) has approved the application of an EU AIFM authorised in accordance with Directive 2011/61/EU to manage the ELTIF **■** ;
- (ba) is satisfied that the proposed ELTIF manager or a person exercising a management function within the proposed ELTIF manager has not previously been the subject of penalties for infringements of national or Union law governing fund management.**
- 1a. The competent authority shall provide the applicant ELTIF with an answer within [two] month.**



2. The competent authority of the ELTIF may refuse the application of the EU AIFM to manage the ELTIF only where:
  - (a) the EU AIFM does not comply with this Regulation;
  - (b) the EU AIFM does not comply with Directive 2011/61/EU, *as established in cooperation with the competent authority of the ELTIF manager in accordance with this Regulation and with the supervisory cooperation arrangements laid down in Directive 2011/61/EU*;
  - (c) the EU AIFM is not authorised by its competent authority to manage AIFs that include funds of the type covered in this Regulation, *as established in cooperation with the competent authority of the ELTIF manager in accordance with this Regulation*;
  - (d) the EU AIFM has not provided the documentation referred to in Article 4(2), *or any clarification or information requested thereunder*.

Before refusing an application the competent authority of the ELTIF shall consult the competent authority of the EU AIFM.

3. The competent authority shall not grant authorisation as an ELTIF if the applicant ELTIF is legally prevented from marketing its units or shares in its home Member State. ***The competent authority shall communicate to the applicant ELTIF the reason for its refusal to grant authorisation. The refusal shall apply in all Members States.***
4. Authorisation as an ELTIF shall not be subject to a requirement that the ELTIF be managed by an EU AIFM authorised in the ELTIF home Member State or that the EU AIFM pursue or delegate any activities in the ELTIF home Member State

## Article 6

### Applicable rules and liability

1. An ELTIF shall comply at all times with the provisions of this Regulation.
2. An ELTIF and an *ELTIF* manager shall comply at all times with the requirements of Directive 2011/61/EU.

3. The *ELTIF manager* shall be responsible for ensuring compliance with this Regulation.  
The *ELTIF manager* shall be liable for any loss or damage resulting from non-compliance with this Regulation.

## Chapter II

### Obligations concerning the investment policies of ELTIFs

#### SECTION 1

##### GENERAL RULES AND ELIGIBLE ASSETS

#### Article 7

##### Investment compartments

Where an ELTIF comprises more than one investment compartment, each **ELTIF** compartment shall be regarded as a separate ELTIF for the purposes of this Chapter.

#### Article 8

##### Eligible investments

1. ***In accordance with the objectives of a smart, sustainable and inclusive growth***, an ELTIF shall only invest in the following categories of assets and only under the conditions specified in this Regulation:
  - (a) eligible investment assets;
  - (b) assets referred to in Article 50(1) of Directive 2009/65/EC of the European Parliament and of the Council<sup>1</sup>.
2. An ELTIF shall not undertake any of the following activities:
  - (a) short-selling of assets;

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<sup>1</sup> ***Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).***

- (b) taking direct or indirect exposure to commodities, including via derivatives, certificates representing them, indices based on them or any other means or instruments that would give an exposure to them;

■

- (d) using financial derivative instruments, except where ■ it solely serves the purpose of hedging ■ risks inherent to other investments of the ELTIF.

**2a. *In order to ensure consistent application of this Article, ESMA shall, after conducting an open public consultation, develop draft regulatory technical standards specifying criteria for establishing the circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments referred to in paragraph 2(d).***

***ESMA shall submit those draft regulatory technical standards to the Commission by [OJ please insert date: 3 months after entry into force of this Regulation].***

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

## Article 9

### Eligible investment assets

An asset referred to in Article 8(1)(a) shall be eligible for investment by an ELTIF only where it falls into one of the following categories:

- (a) equity or quasi-equity instruments which have been:
  - (i) issued by a qualifying portfolio undertaking and acquired directly by the ELTIF from the qualifying portfolio undertaking;
  - (ii) issued by a qualifying portfolio undertaking in exchange for an equity instrument previously acquired directly by the ELTIF from the qualifying portfolio undertaking;
  - (iii) issued by an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary, in exchange for an equity instrument acquired in

accordance with points (i) or (ii) by the ELTIF from the qualifying portfolio undertaking;

- (b) debt instruments issued by a qualifying portfolio undertaking ***with a maturity aligned to the life of the ELTIF***;
- (c) loans granted by the ELTIF to a qualifying portfolio undertaking ***with a maturity aligned to the life of the ELTIF***;
- (d) units or shares of one or several other ELTIFs, European Venture Capital Funds (EuVECAs) and European Social Entrepreneurship Funds (EuSEFs) provided that those ELTIFs, EuVECAs and EuSEFs have not themselves invested more than 10% of their capital in ELTIFs;
- (e) direct holdings ***or indirect holdings via qualifying portfolio undertakings*** of individual ***infrastructure*** that require up-front capital expenditure of at least EUR 10 million or its equivalent in the currency, and at the time, in which the expenditure is incurred ***and provide regular predictable returns***.

***In accordance with the objectives of a smart, sustainable and inclusive growth or with the Union regional policy, projects financed by a public-private partnership shall be granted priority by the competent authorities when examining an application.***

## Article 10

### Qualifying portfolio undertaking

1. A qualifying portfolio undertaking referred to in Article 9(1) shall be a portfolio undertaking other than a collective investment undertaking that fulfils all of the following requirements:
  - (a) it is not a financial undertaking ***other than the European multilateral development banks referred to in Regulation (EU) No 575/2013 [CRR] Article 117(2)(f), (i), (j) and (k)***;
  - (b) it is not admitted to trading:
    - (i) on a regulated market as defined in *point 21 of Article 4(1) of Directive 2014/.../EU [new MIFID]*;

- (ii) on a multilateral trading facility as defined *in point 22 of Article 4(1) of Directive 2014/.../EU [new MIFID]*;

**I**

**(ba) it is admitted to trading on a regulated market or on a multilateral trading facility and has a market capitalisation of no more than EUR 1 billion;**

**(bb) it is admitted to trading on a regulated market or on a multilateral trading facility and is considered to be an SME in accordance with Article 2(1) of the Annex to Commission Recommendation 223/361/EC<sup>1</sup>;**

**(c) it is established in a Member State, or in a third country provided that the third country:**

**(i) is not a high-risk and non-cooperative jurisdictions identified by the Financial Action Task Force (FATF); or**

**(ii) has signed an agreement with the home Member State of the *ELTIF* manager and with every other Member State in which the units or shares of the ELTIF are intended to be marketed which *provides* that the third country *is not a country*:**

**- where there are no or nominal taxes,**

**- where there is a lack of effective exchange of information with foreign tax authorities,**

**- where there is a lack of transparency in legislative, judicial or administrative provisions,**

**- where there is no requirement for a substantive local presence,**

**- which acts as an offshore financial centre.**

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<sup>1</sup> ***Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (L 124, 20.5.2003, p. 36).***

2. By way of derogation from paragraph 1(a) [...], a qualifying portfolio undertaking may be a financial undertaking ***or a collective investment undertaking*** that, ***in accordance with the objectives of a smart, sustainable and inclusive growth***, exclusively finances qualifying portfolio undertakings referred to in paragraph 1 of this Article or real assets referred to in Article 9.

## Article 11

### *Conflicts of interest*

An ELTIF shall not invest in an eligible investment asset in which the manager has or takes a direct or indirect interest, other than by holding units or shares of the ***ELTIFs, EUSEFs or EuVEcAs or collective investment undertakings within the meaning of Article 10(2)*** it manages.

## SECTION 2

### PROVISIONS ON INVESTMENT POLICIES

## Article 12

### Portfolio composition and diversification

1. An ELTIF shall invest at least 70% of its capital in eligible investment assets ***and at least 60% of its capital in assets listed in Article 9(a), (b) and (c) in qualifying portfolio undertakings established within the territory of a Member State.***
- 1a. Where the rules or instruments of incorporation of ELTIF provide for regular redemption rights, the ELTIF shall maintain at the predefined redemption periods a liquidity reserve taking into account the requirements and conditions for exercise of the redemption rights, commensurate with the management of liquidity for the exercise of redemption rights.***
- 1b. ESMA shall develop regulatory technical standards to further specify the structure of the liquidity reserves.***

***ESMA shall submit those draft regulatory technical standards to the Commission by ...\*.***

***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

2. An ELTIF shall invest no more than:
  - (a) 10% of its capital in assets issued by any single qualifying portfolio undertaking;
  - (b) 10% of its capital ***directly or indirectly*** in an individual ***infrastructure according to Article 9(e)***;
  - (c) 10% of its capital in units or shares of any single ELTIF, EuVECA, EuSEF ***or AIFs***;
  - (d) 5% of its capital in assets referred to in Article 8(1)(b) where those assets have been issued by any single body.
3. The aggregate value of units or shares of ELTIFs, EuVECAs and EuSEFs in an ELTIF portfolio shall not exceed 20% of the value of its capital.
4. The aggregate risk exposure to a counterparty of the ELTIF stemming from over the counter (OTC) derivative transactions or ***repurchase agreements or*** reverse repurchase agreements shall not exceed 5% of its capital.
5. By way of derogation from paragraph 2(a) and 2(b), the ELTIF may raise the 10% limit referred to therein to 20%, provided that the aggregate value of the assets held by the ELTIF in qualifying portfolio undertakings and in individual real assets in which it invests more than 10% of its capital does not exceed 40% of the value of its capital.
6. Companies which are included in the same group for the purposes of consolidated accounts, as regulated by Seventh Council Directive 83/349/EEC<sup>1</sup> or in accordance with recognised international accounting rules, shall be regarded as a single qualifying portfolio undertaking or a single body for the purpose of calculating the limits referred to in paragraphs 1 to 5.

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<sup>1</sup> OJ L 193, 18.7.1983, p. 1.

## *Article 12a*

***In circumstance where the ELTIF breaches the diversification requirements as stipulated in Article 12 and the contravention is beyond the control of the ELTIF manager, competent authorities shall provide a period of six months for the manager to take such measures as are necessary to rectify the position.***

## Article 13

### Concentration

1. An ELTIF may acquire no more than 25% of the units or shares of a single ELTIF, EuVECA or EuSEF.
2. The concentration limits laid down in Article 56(2) of Directive 2009/65/EC shall apply to investments in the assets referred to in Article 8(1)(b) of this Regulation.

## *Article 14*

### *Borrowing of cash*

An ELTIF may borrow cash provided that such borrowing fulfils all of the following conditions:

- (a) it represents no more than **40** % of the capital of the ELTIF;
- (b) it serves the purpose of acquiring a participation in eligible investment assets;
- (c) it is contracted in the same currency as the assets to be acquired with the borrowed cash;

**I**

***(ea) it encumbers the assets that represent no more than 30 % of the capital of the ELTIF.***

***(eb) its duration is aligned with the life of the ELTIF.***

***The ELTIF manager shall inform the investors in advance about future borrowing needs that arise within the investment strategy.***



## Article 15

### Application of portfolio composition and diversification rules

1. The investment limits laid down in Article 12(1) shall:
  - (a) apply by the date specified in the ELTIF rules or instruments of incorporation, where this date shall take account of the peculiarities and characteristics of the assets to be invested by the ELTIF and shall not be later than five years *or half the life of the ELTIF as determined in accordance with Article 16(2), whichever is the earlier*, after the authorisation of the ELTIF. In exceptional circumstances, the competent authority of the ELTIF, upon submission of a duly justified investment plan, may approve an extension of this time limit by no more than one additional year;
  - (b) cease to apply once the ELTIF starts to sell assets in accordance with its redemption policy as set out in Article 16;
  - (c) be temporarily suspended where the ELTIF raises additional capital, so long as such a suspension lasts no longer than 12 months, *in particular in the case of an infrastructure investment*.
2. Where a long-term asset in which the ELTIF has invested is issued by a qualifying portfolio undertaking that no longer complies with Article 10(1)(b), the long-term asset may continue to be counted for the purpose of calculating the 70% referred to in Article 12(1) for a maximum of three years as of the date when the portfolio undertaking no longer fulfils the requirements in Article 10.

## Chapter III

# Redemption, trading and issue of ELTIF shares or units and distributions of income

### Article 16

#### Redemption policy

1. *The ELTIF manager may set up a professional ELTIF with no participation for retail investors or he may decide to set up an ELTIF where retail, professional and semi-professional investors can participate.*
  - 1a. The ELTIF rules or instruments of incorporation *may indicate a specific date as the end of life of the ELTIF as well as the right for temporary extension of its life-cycle and the conditions to exercise the right. Where no specific date is indicated, the life of the ELTIF shall not be limited.*
  - 1b. *When the ELTIF manager decides to let retail investors participate in the ELTIF, all investors shall be able to ask for redemption of their units or shares before the end of life of the ELTIF. However, redemption of units and shares by institutional or retail investors can only take place after the life of ELTIF is halfway and for a total maximum of 20 % of the total amount of the fund. If no redemption rights are foreseen in the rules or instruments of incorporation of the ELTIF, redemption to investors shall be possible as of the day following the date defining the end of life of the ELTIF.*

*ESMA shall develop draft regulatory technical standards to further specify the conditions and requirements of the redemption policy structures of ELTIFs, to achieve clarity and consistency across the Union.*
2. The life of the ELTIF shall be *consistent with the long-term nature of the ELTIF and shall be* sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset, and the stated investment objective of the ELTIF.

3. Investors may request the winding down of the ELTIF if their redemption requests ***made in accordance with the ELTIF's redemption policy*** have not been satisfied within one year after the ***date when they have been made***.
- 3a. ***The ELTIF rules or instruments of incorporation and disclosures to investors shall lay down the procedures for reinvesting the proceeds from investment in qualifying portfolio undertakings, either in further qualifying portfolio undertakings or high-quality liquid assets, where such investments mature prior to the end of life of the ELTIF.***
4. Investors shall always have the option to be repaid in cash.
5. Repayment in kind out of the ELTIF's assets shall be possible only where all of the following conditions are met:
- (a) the ELTIF rules or instrument of incorporation foresees this possibility, under the condition that all investors receive fair treatment;
  - (b) the investor asks in writing to be repaid through a share of the assets of the fund;
  - (c) no specific rules restrict the transfer of those assets.
6. ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is sufficient in length to cover the life-cycle of each of the individual assets of the ELTIF.

ESMA shall submit those draft regulatory technical standards to the Commission by **2015**.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## Article 17

### Secondary market

1. The ELTIF rules or instrument of incorporation shall not prevent units or shares of an ELTIF from being admitted to trading on a regulated market as defined in Article 4(14) of Directive 2004/39/EC or on a multilateral trading facility as defined in Article 4(15) of Directive 2004/39/EC ■ .

2. The ELTIF rules or instrument of incorporation shall not prevent investors from freely transferring their shares or units to third parties.
- 2a. ***The ELTIF shall regularly publish an explanation of any significant difference between the market value of listed shares or units and its own estimate of its net asset value.***

## Article 18

### Issuance of new shares or units

1. An ELTIF may offer new issues of shares or units in accordance with its fund rules or instruments of incorporation.
2. An ELTIF shall not issue new shares or units at a price below its net asset value without a prior offering of those shares or units at that price to existing investors.

## Article 19

### Disposal of ELTIF assets

1. Each ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors after the end of life of the ELTIF.
2. The schedule referred to in paragraph 1 shall ***be at least annually reviewed and shall*** include:
  - (a) an assessment of the market for potential buyers;
  - (b) an assessment and comparison of potential sales prices;
  - (c) a valuation for the assets to be divested;
  - (d) a precise timeframe for the disposal schedule.
3. ESMA shall develop draft regulatory technical standards specifying the criteria to be used for the assessments in point (a) and valuation in point (c) of paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## Article 20

### Distribution of *proceeds*

1. An ELTIF may regularly distribute to investors the *proceeds* generated by the assets contained in the portfolio. *Those proceeds* shall be composed of:
  - (a) any *proceeds* that the assets are regularly producing;
  - (b) the capital appreciation realized after the disposal of an asset ■.
2. The income *distribution policy shall be designed to minimise the volatility of returns to investors. The income* shall not be distributed to the extent that it is required for future commitments of the ELTIF.
- 2a. *An ELTIF shall be authorised to reduce its capital on a pro rata basis in the event that it has disposed of one of its portfolio assets.*
3. The ELTIF shall state in its fund rules or instruments of incorporation the distribution policy that it will adopt during the life of the fund.

## Chapter IV

### Transparency requirements

## Article 21

### Transparency

1. The units or shares of an authorised ELTIF shall not be marketed in the Union without prior publication of a prospectus.

The units or shares of an authorised ELTIF shall not be marketed to retail investors in the Union without prior publication of a key information document (KID) in accordance with Regulation (EU) No .../... [PRIIPS].

2. The prospectus shall include the information necessary for investors to be able to make an informed judgement regarding the investment proposed to them, and, in particular, the risks attached thereto.
3. The prospectus shall contain at least the following:
  - (a) a statement setting out how the ELTIF's investment objectives and strategy for achieving these objectives qualify the fund as long term in nature;
  - (b) information to be disclosed by collective investment undertakings of the closed-end type in accordance with Directive 2003/71/EC of the European Parliament and of the Council<sup>1</sup> and Commission Regulation (EC) No 809/2004<sup>1</sup>;
  - (c) information to be disclosed to investors pursuant to Article 23 of Directive 2011/61/EU, if it is not already covered under point(b) of this paragraph;
  - (d) prominent indication of the categories of assets the ELTIF is authorised to invest in;
  - (da) a cash flow statement.**

■

4. The prospectus, the KID and any other marketing documents shall prominently notify investors about the illiquid nature of the ELTIF.

In particular, the prospectus, the KID, and any other marketing documents shall clearly:

- (a) inform investors about the long-term nature of the ELTIF's investments;
- (b) **where applicable according to Article 16(1)** inform investors about the end of life of the ELTIF **and any right of temporary expansion or any right of intervention of the life of the ELTIF and the specific conditions provided for;**
- (c) state whether the ELTIF is intended to be marketed to retail investors;
- (d) state **the rights of** investors ■ **to redeem their investment in accordance with Article 16(1) and with the rules or instruments of incorporation** of the ELTIF;

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<sup>1</sup> OJ L 345, 31.12.2003, p.64.

- (e) state the frequency and the timing of any income payments, if any, to the investors during the life of the fund;
- (f) advise investors that only a small proportion of their overall investment portfolio should be invested in an ELTIF.
- (fa) inform investors about the strategy for qualifying unlisted companies to be admitted to trading in regulated markets;***
- (fb) inform investors about the strategy regarding the use of derivatives taking into account specific characteristics and aspects of the project in question;***
- (fc) mention any participation in instruments involving Union budgetary funds.***
- (fd) inform investors regularly, at least once a year, of the progress of each investment project, the value of the individual qualifying portfolio investments and the value of other assets in which spare cash is placed as well as the nature, purpose and value of any derivatives used.***
- 4a The prospectus of professional ELTIFs shall contain the information required under Article 23 of Directive 2011/61/EU. In addition, it shall also contain any deviation from the provisions of Article 12 on portfolio composition.***

## Article 22

### Cost disclosure

1. The prospectus shall prominently inform investors as to the level of the different costs borne directly or indirectly by the investor. The different costs shall be grouped according to the following headings:
  - (a) costs of setting-up the ELTIF;
  - (b) the costs related to the acquisition of assets;
  - (c) management costs;
  - (d) distribution costs;

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<sup>1</sup> **OJ L 149, 30.4.2004, p. 1.**

- (e) other costs, including administrative, regulatory, *depository*, custodial, *professional service* and audit costs.
2. The prospectus shall disclose an overall ratio of the costs to the capital of the ELTIF.
  3. The key information document shall reflect all of the costs outlined in the prospectus within its expression of total costs in monetary and percentage terms.
  4. ESMA shall develop draft regulatory technical standards to specify:
    - (a) the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2;
    - (b) the common definition, calculation methodology and presentation format of the expression of total costs in paragraph 3.

When developing these draft regulatory technical standards, ESMA shall take into account the draft regulatory standards referred to in point (...) of Regulation (EU) No .../... [PRIPS].

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

## Chapter V

### Marketing of units or shares of ELTIFs

#### Article 23

##### Facilities available to investors

1. ***Where the rules or instruments of incorporation of a retail ELTIF provide for redemption rights, the ELTIF manager*** shall, in each Member State where it intends to market units or shares of that ELTIF, put in place facilities available for making subscriptions, making payments to unit- or shareholders, repurchasing or redeeming units



or shares and making available the information which the ELTIF and its managers are required to provide.

2. ESMA shall develop draft regulatory technical standards to specify the types and characteristics of the facilities, their technical infrastructure and of the content of their tasks in respect of ELTIF investors referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

- 2a. For professional ELTIFs, the paragraph 1 of this Article shall not apply.*

## Article 24

### Additional requirements for marketing to retail investors

The ELTIF manager **may** market the units or shares of that ELTIF to retail investors provided that all of the following additional requirements are fulfilled:

- (a) the ELTIF's rules or instruments of incorporation provide that all investors benefit from equal treatment and no preferential treatment or specific economic benefits are granted to individual investors or groups of investors;
- (b) the ELTIF **may be** structured as a partnership ***if this does not require additional commitments for the investor apart from the original capital commitment;***
- (c) retail investors may, during the subscription period ■ of units or shares of the ELTIF, cancel their subscription and have the money returned without penalty;
- (ca) ***the ELTIF manager has established appropriate procedures and arrangements to deal with retail investor complaints, which allow retail investors to file complaints in the official language or one of the official languages of their Member State;***
- (cb) ***the legal form of the ELTIF is such that retail investors cannot lose more than the amount that they have invested into the fund;***

- (cc) *the ELTIF invests in units or shares of EuVECA and EuSEF only where those funds have a depositary;*

*ESMA shall develop standards further specifying the provisions for retail investors to be included in the rules or instruments of incorporation.*

## Article 25

### Marketing of units or shares of ELTIFs

1. The *ELTIF manager* shall be able to market the units or shares of that authorised ELTIF to professional, ***semi-professional*** and retail investors in its home Member State upon notification in accordance with Article 31 of Directive 2011/61/EU.
2. The *ELTIF manager* ***may*** market the units or shares of that authorised ELTIF to professional, ***semi-professional*** and retail investors in Member States other than in the home Member State of the ELTIF manager upon notification in accordance with Article 32 of Directive 2011/61/EU.
3. The *ELTIF manager* shall in respect of each ELTIF specify to its competent authority whether or not it intends to market it to retail investors.
4. In addition to the documentation and information required pursuant ***Article*** 32 of Directive 2011/61/EU the manager of the ELTIF shall provide to its competent authority all of the following:
  - (c) the prospectus of the ELTIF;
  - (d) the key information document of the ELTIF in case of marketing to retail investors;
  - (e) information on the facilities referred to in Article 22.
5. The competences and powers of the the competent authorities pursuant to ***Article*** 32 of Directive 2011/61/EU shall be understood to also refer to the marketing of ELTIFs to retail investors and to cover the additional requirements laid down in this Regulation.
6. **■** ***The*** competent authority of the home Member State of the ELTIF manager shall ***prohibit*** the marketing of an authorised ELTIF if the ELTIF manager does not comply with this Regulation.

7. In addition to its powers in accordance with *the first subparagraph of* Article 32(3) [...] of Directive 2011/61/EU, the competent authority of the home Member State of the ELTIF manager shall also refuse the transmission of a complete notification file to the competent authorities of the Member State where the ELTIF is intended to be marketed, if the ELTIF manager does not comply with this Regulation.

## Chapter VI

### Supervision

#### Article 26

##### Supervision by the competent authorities

1. The competent authorities shall supervise compliance with this Regulation on an on-going basis.
2. The competent authority of the ELTIF shall be responsible for supervising compliance with the rules laid down in Chapters II, III and IV.
3. The competent authority of the ELTIF shall be responsible for supervising compliance with the obligations set out in the fund rules or in the instruments of incorporation, and the obligations set out in the prospectus, which shall be consistent with this Regulation.
4. The competent authority of the *ELTIF manager* shall be responsible for supervising the adequacy of the arrangements and organisation of the manager so that the manager of the ELTIF is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the ELTIFs it manages.

The competent authority of the manager shall be responsible for supervising compliance of the ELTIF manager with this Regulation.

5. Competent authorities shall monitor collective investment undertakings established or marketed in their territories to verify that they do not use the ELTIF designation or suggest that they are an ELTIF unless they are authorised and comply with this Regulation.

## Article 27

### Powers of competent authorities

1. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.
  - 1a. *The competent authority of the ELTIF shall, while respecting the principle of proportionality, take the appropriate measures, in particular where ELTIF manager:***
    - (a) fails to comply with the requirements that apply portfolio composition and diversification in breach of Articles 12 and 15;***
    - (b) markets, the units of shares of a ELTIF to retail investors in breach of Article 24 and 25;***
    - (c) uses the designation ELTIF but is not authorised to do so in accordance with Article 3;***
    - (d) uses the designation ELTIF for the marketing of funds which are not established in accordance with Article 3(1);***
    - (e) fails to comply with the applicable rules and liability in breach of Article 6.***
  - 1b. *In the cases referred to in paragraph 1a, the competent authority of the home Member State of the ELTIF shall, as appropriate:***
    - (a) take measures to ensure that the ELTIF manager complies with Articles 3, 6, 12, 15, 24, and 25.***
    - (b) prohibit the use of the designation ELTIF and withdraw the approval given to the ELTIF manager concerned from the authorisation.***
2. The powers conferred on competent authorities in accordance with Directive 2011/61/EU shall be exercised also with respect to this Regulation.

## Article 28

### Powers and competences of ESMA

1. ESMA shall have the powers ***and resources*** necessary to carry out the tasks attributed to it by this Regulation.
2. ESMA's powers in accordance with Directive 2011/61/EU shall be exercised also with respect to this Regulation and in compliance with Regulation (EC) No 45/2001.
3. For the purposes of Regulation (EU) No 1095/2010, this Regulation shall be included under any further legally binding Union act which confers tasks on the Authority as referred to in Article 1(2) of Regulation (EU) 1095/2010.

## Article 29

### Cooperation between authorities

1. The competent authority of the ELTIF and the competent authority of the manager, if different, shall cooperate with each other and exchange information for the purpose of carrying out their duties under this Regulation.
2. Competent authorities and ESMA shall cooperate with each other for the purpose of carrying out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010.
3. **Competent authorities and ESMA shall exchange** all information and documentation necessary to **carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1095/2010, in particular to** identify and remedy breaches of this Regulation.

## Chapter VII

### Final provisions

#### Article 30

##### Review

***The Commission shall start a review of the application*** of this Regulation ***at the same time as or immediately after the review provided for in Article 69*** of the ***Directive 2011/61/EU***. The review shall analyse in particular:

- (a) the impact of **■** Article 16(1) **■**;
- (b) the impact on asset diversification of the application of the minimum threshold of 70 % of eligible investment assets laid down in Article 12(1), in particular **■** whether increased measures on liquidity would be necessary **■**;
- (c) the extent to which ELTIFs are marketed in the Union, including whether AIFMs *within the meaning of* Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs;
- (ca) the extent to which the list of eligible assets and investments should be updated, as well as the diversification rules, portfolio composition and limits regarding the borrowing of cash.***

The results of *that* review shall be communicated to the European Parliament and *to* the Council accompanied, where necessary, by appropriate proposals for amendments.

#### Article 31

##### Entry into force

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*